

California to Continue Enforcement of the
Ocean-Going Vessel Auxiliary Diesel Engine Regulation

Date of Notice: **March 10, 2008**

Notice to Ship Owners or Operators:

As permitted under federal law, this is to inform you that the California Air Resources Board (ARB) has decided to continue to enforce the Ocean-Going Vessel Auxiliary Diesel Engine Regulation (regulation) while litigation involving the regulation remains active. This Notice supersedes any and all prior notices, statements, or other communications made by ARB staff. The requirements of the regulation can be found at title 13, California Code of Regulations (CCR), §2299.1 and the identical provisions at title 17, CCR, §93118. It can also be found at ARB's website at www.arb.ca.gov/regact/marine2005/marine2005.htm. This regulation became effective on January 1, 2007.

Pursuant to an injunction ordered by a federal district court (district court), ARB ceased enforcing the regulation in the fall of 2007. See *Pacific Merchant Shipping Ass'n v. Thomas A. Cackette* (E.D. Cal. Aug. 30, 2007), No. Civ. S-06-2791-WBS-KJM. The ARB filed an appeal with the U.S. Ninth Circuit Court of Appeals (Ninth Circuit) of the district court's decision and requested a stay of the injunction pending the appeal. This stay was granted on October 23, 2007. See *Pacific Merchant Shipping Ass'n v. Thomas A. Cackette*, No. 07-16695 (9th Cir. Oct. 23, 2007). On February 27, 2008, a three-judge panel of the Ninth Circuit issued a ruling holding that the regulation was preempted under federal law. At that time, ARB temporarily suspended enforcement of the regulation in order to determine the next appropriate actions to take. Under federal court rules, reinstatement of the district court's injunction has not yet become effective in order to permit ARB an opportunity to seek further appeals. See *Pacific Merchant Shipping Ass'n v. James Goldstene*, No. 07-16695 (9th Cir. Feb. 27, 2008). The ARB has decided to pursue such an appeal. Because of the significant adverse health impacts from human exposure to the air pollutants emitted by ocean-going vessels in California waters, ARB has decided to resume enforcement of the regulation, as permitted under federal law, in order to protect public health in California while its appeal with the Ninth Circuit is pending.

The ARB will resume enforcing the regulation as of the date of this Notice and will continue enforcing the regulation while further appeals are pending. However, ARB will not be enforcing the regulation against any vessel that left its last port-of-call **before March 14, 2008** on its way to California.

If you have any questions about this notice, please contact Mr. Paul Milkey, Staff Air Pollution Specialist, at (916) 327-2957 or pmilkey@arb.ca.gov, or Ms. Peggy Taricco, Manager, at (916) 323-4882 or ptaricco@arb.ca.gov.